IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11897 of 2001
SPECIAL CIVIL APPLICATION No 11900 of 2001
and
SPECIAL CIVIL APPLICATION No 11902 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : to see the judgements?

2. To be referred to the Reporter or not? :

3. Whether Their Lordships wish to see the fair copy : of the judgement?

4. Whether this case involves a substantial question : of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? :

PRESIDENT JETPUR NAVAGADH NAGARPALIKA
Versus
DIST COLLECTOR SHREE, RAJKOT DISTRICT

Appearance:
MR RR TRIVEDI for Petitioner No. 1
MR BHAVESH P TRIVEDI for Petitioner No. 1
Ms MANISHA LAVKUMAR, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 02/05/2002

COMMON ORAL JUDGEMENT

Rule. Ms Manisha Lavkumar, learned AGP waives service of Rule for the Director of Municipalities and the Collector, Rajkot.

2. In these three petitions under Article 226/227 of

the Constitution, the President of the Jetpur Navagadh Municipality has challenged the orders dated 30.4.2001 passed by the Director of Municipalities, Gujarat State by which the Director refused to condone the delay in filing the appeals. The appeals under Section 258(3) of the Gujarat Municipalities Act, 1963 (hereinafter referred to as "the Act") were directed against the orders passed by the Collector, Rajkot under Section 258(1) of the Act staying different resolutions passed by the Municipality.

By Resolution Nos. 18 and 31(5) passed by the Municipality on 27.4.1998 and by another Resolution No. 93, the Municipality had authorized the President to compromise the matters placed before the Lok Adalats. Special Civil Application No. 11897 of 2001 pertaining to Resolution No. 92 also covers certain other resolutions which are not referred to in view of the order that the Court proposes to pass in these petitions.

Aggrieved by the orders of the Collector staying the resolutions, the President of the Municipality filed the appeals before the Director of Municipalities under Section 258(3) of the Act. In all the appeals, there was delay of about 200 days. The petitioner, therefore, filed applications for condonation of delay in each of the appeals. Those applications have been dismissed by the Director by three separate impugned orders dated 30.4.2001 on the ground that sufficient cause was not shown.

3. Mr Trivedi, learned counsel for the petitioner has submitted that in view of several decisions of the Hon'ble Supreme Court and of this Court, the Director ought to have condoned the delay. Strong reliance is placed on the decisions in AIR 1987 SC 1353 and 1998(7) SCC 123.

4. On the other hand, learned AGP has submitted that the Director has not only considered the question of delay, but has also considered the matters on merits and found that no serious or irreparable hardship will be caused to the Municipality if the orders of the Collector under Section 258(1) of the Act are not interfered with.

5. Having heard the learned counsel for the parties, it appears to the Court that the resolutions passed by the Municipality authorizing its President to compromise the matters pending before the Courts cannot be said to be contrary to law. A large number of cases are filed in the Courts against public bodies. While some of them may

be frivolous or untenable and are required to be contested by the Municipality, there are also some cases in which the authorities might have acted illegally and if the Courts were to decide such matters on merits after a long delay, the Municipalities might be faced with adverse orders. For instance, if the Labour Courts were to hold in favour of workmen, the awards may be for not only reinstatement but also for backwages. Similarly, long delay in disposal of cases may hurt the municipality also. It is, therefore, in the interests of the litigants including public bodies that cases which deserve to be settled are settled expeditiously.

Although the impugned orders do not indicate the reasons which weighed with the Collector for setting aside the resolutions of the Municipality authorizing the President to compromise the cases, in case the Collector apprehended that such authorization to settle the cases might be misused, the Collector could have laid down guidelines to be considered by the Municipality and the President before taking the decision to settle the cases or the Collector could have suggested any other modalities providing for safeguards on the exercise of the power to compromise the cases, but the Collector ought not to have straightaway stayed the resolutions under Section 258(1) of the Act and deprive the Municipality of the right to delegate the power to settle the cases.

The Collector could have, for instance, suggested safeguards like the following (which are only illustrative and not exhaustive):-

(i) Constitution of a Committee for taking decisions to compromise cases which must include the Chief Officer and any other Officer who is the head of the concerned department like Engineering Department or whichever is the concerned Department.

(ii) In labour and service cases, an employee whose services are terminated or who is not continued in service may be taken back in service only if he would be within the sanctioned staff set-up of the Municipality or within the additional staff set-up sanctioned by the competent authority like the Director of Municipalities.

(iii) In labour and service cases, backwages may not be paid.

The Court need not go into the merits of this issue in details because the Court only proposes to examine the question whether the Director was justified in throwing out the appeals at the threshhold by rejecting the application for condonation of delay.

6. In view of the above and particularly in view of the principles laid down by the Apex Court in Collector, Land Acquisition, Anantnag vs. Katiji, AIR 1987 SC 1353 and in N. Balakrishnan vs. M. Krishnamurthy, (1998) 7 SCC 123, this Court is of the view that the Director ought to have entertained the three appeals on merits by condoning the delay. As indicated in the aforesaid decisions, the question whether the appellant has shown sufficient cause for condonation of delay is not to be examined in isolation, but such question is also required to be examined in the context of the merits of the appeal. Just as in the two other cases, this Court has found that the Director did not err in dismissing the application for condonation of delay because apart from the question of delay, the Director found the orders of the Collector to be legal and valid on merits, in the facts of these appeals, the Director ought to have examined the question of delay in the context of the delegation of power of the Municipality to compromise cases pending before the Courts of law.

7. In view of the above discussion, these petitions are allowed. The impugned orders dated 30.4.2001 passed by the Director of Municipalities, Gujarat State in Municipal Appeal Nos. 327, 334 and 335 of 1999 are hereby quashed and set aside. The Director of Municipalities shall entertain the appeals on merits, hear the parties and then decide the appeals in accordance with law.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)
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